

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

This Document Relates To:

ALL ACTIONS

Case No. 3:23-md-03084-CRB

**JOINT CASE MANAGEMENT
STATEMENT**

Judge: Hon. Charles R. Breyer
Courtroom: 6 – 17th Floor

Date: December 19, 2024
Time: 11:00 a.m.

JOINT CASE MANAGEMENT STATEMENT

Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC (collectively “Uber”), and Plaintiffs’ Co-Lead Counsel (collectively referred to herein as “the Parties”), respectfully provide this Joint Case Management Conference Statement and Proposed Agenda in advance of the Case Management Conference scheduled for December 19, 2024.

Proposed Agenda

- I. Status of Case Filings**
- II. Bellwether Selection Process**
- III. Motions to Dismiss**
- IV. General Discovery Updates**
- V. Motions to Transfer**
- VI. Defendants’ Request for a Filing Cut-Off**
- VII. Coordination**
- VIII. Next Case Management Conference**

I. Status of Case Filings

Number of MDL Case Filings

As of December 16, 2024, there are currently 1,481 cases in this MDL. Since the Parties submitted the Joint Case Information Chart to the Court on September 30, 2024, 169 new cases have been filed.

Status of JCCP

There are approximately 500 cases pending in the JCCP.

Other Cases and Proceedings

A list of other proceedings relating to sexual assault on the Uber platform known to Plaintiffs is attached as **Exhibit A**. In conjunction with upcoming joint case management statements, Uber has agreed to provide the Court with a list of civil cases arising from a sexual assault on the Uber platform in which Uber is a defendant.

1 **II. Bellwether Selection Process**

2 On December 12, 2024, the Court issued PTO 21: Bellwether Selection Process and
3 Scheduling Order. The Parties are prepared to answer any additional questions the Court might
4 have about the bellwether selection process at the Case Management Conference.

5 **III. Motions to Dismiss**

6 The Court ordered the parties to meet and confer on the application of the Court's Rule 12
7 orders on the claims asserted under the laws of Arizona, Georgia, Nevada, Pennsylvania, and
8 Virginia, and to brief any remaining disputes. On December 2, 2024, the Parties filed a Joint
9 Stipulation and Proposed Order re: Motions to Dismiss Pursuant to the Laws of Arizona, Georgia,
10 Nevada, Pennsylvania, and Virginia. ECF No. 1918. The Parties were able to resolve all disputes.
11 The Court entered the Parties' Proposed Order on December 4, 2024. ECF No. 1932.

12 In light of PTO 21, the parties will meet and confer on whether it makes sense to stipulate
13 or brief additional states at this time, the appropriate states for doing so, and any briefing
14 schedule, and update the Court before the next case management conference.

15 **IV. General Discovery Updates**

16 Judge Cisneros issued an order resolving the parties' dispute over obligations under PTO
17 10 (Plaintiff Fact Sheets) on November 18, 2024. ECF No. 1877. Plaintiffs are to comply with the
18 order by December 18, 2024.

19 Judge Cisneros issued an order on the second joint letter regarding the time period for
20 discovery on November 18, 2024. ECF No. 1879. Uber sought review of Judge Cisneros' first
21 order on this issue (ECF No. 1816) on November 14, 2024. ECF No. 1876. This Court denied
22 Uber's Motion on December 6, 2024. ECF No. 1938. The parties are to submit either a stipulation
23 or joint letter addressing a plan for Uber's production of documents postdating November 23,
24 2023 to Judge Cisneros by December 20, 2024.

25 Judge Cisneros issued an order regarding Plaintiffs' first set of challenges to Uber's
26 privilege claims on November 27, 2024. ECF No. 1908. Uber was ordered to produce documents
27 and revise its privilege logs within 7, 14, or 21 days of the order (depending on the issue). The
28 Parties filed their privilege dispute letter concerning the Tranche 2 custodian privilege logs on

1 December 12, 2024. ECF No. 1952. This issue will be addressed by Judge Cisneros on
2 December 19, 2024.

3 Uber and the law firm of Levin Simes (“LS”) plan on submitting a PTO 8 joint letter to
4 the Court on Wednesday, December 18, 2024, addressing the dismissal of LS’s plaintiffs’ claims
5 if they have missed the deadline for submitting their PFS.¹

6 The Parties are additionally scheduled to appear before Judge Cisneros for a discovery
7 status conference on the morning of December 19, 2024. A joint statement on the status of
8 discovery will be filed on December 16, 2024, which will include an overview of ongoing
9 disputes.

10 **V. Motions to Transfer**

11 **Defendants’ Position:** In light of the Court’s December 13, 2024, Pretrial Order No. 21
12 regarding the Bellwether Selection Process, the Parties seek the Court’s guidance on potential
13 Motions to Transfer. As the Court stated, “[i]ncluding cases in the bellwether process that this
14 Court is unlikely to have jurisdiction over does not advance [the] goal” of efficiently bringing
15 representative cases to trial. Pretrial Order No. 21 at 2. Although the Court has excluded
16 *Lexecon* cases from the Bellwether pool, virtually the entire remaining Bellwether pool
17 (approximately 1456 of 1477 cases), consists of cases with incidents outside of California, and
18 those cases should not reside in the Northern District of California. Those cases should be
19 venued for trial in the state of the incident—not in the Northern District of California. That
20 dispute will need to be adjudicated by the Court—as it was in the JCCP, which found that non-
21 California incidents should not be tried in California courts. The Parties agree that these transfer
22 questions should be decided before the Court rules on the trial lineup. Defendants do not object
23 to Plaintiffs’ proposed briefing schedule outlined below.

24 **Plaintiffs’ Position:** Before a case proceeds to trial, the Court should determine whether
25 venue is appropriate (putting aside Uber’s in-appt comparison of the Court’s analysis under 28
26 U.S.C. § 1404 and the California *forum non conveniens* standard). But trial venue has no
27

28 ¹ Plaintiffs’ Leadership is aware of this law firm-specific PFS discovery issue, but it is being
addressed solely by LS and Uber.

1 relevance to pretrial proceedings under 28 U.S.C. § 1407, including case-specific pleadings and
2 discovery.

3 It makes sense to address these issues when deciding “the order in which the bellwether
4 cases shall be tried.” PTO 21 at 3. In advance of the July 3 letter briefs, the Court should order
5 Uber to file any motions to transfer (or an omnibus motion, if the grounds are substantially the
6 same as between the Plaintiffs Uber elects to move against) by June 2, 2025, with oppositions due
7 June 30, and replies due July 14 (or a little later, if Uber needs more flexibility around the
8 holiday). This will allow the parties to brief proposed trial selections with knowledge of both
9 sides’ arguments for and against transfer, and allow the Court to decide the motions before ruling
10 on trial lineup.

11 **VI. Defendants’ Request for a Filing Cut-Off**

12 **Defendants’ Position:** Uber requests that the Court set a cut-off deadline for the filing of
13 any additional complaints to be included in this MDL.

14 As Defendants have previously stated, setting a filing cut-off date is necessary to identify
15 the universe of cases in this MDL. Only then will the Parties and the Court know the parameters
16 of this coordinated proceeding, including the size and composition of the body of cases, as well as
17 the scope of claims.

18 Those concerns are particularly important now, given that the Parties are beginning the
19 process of selecting bellwether cases. The goal of a bellwether process is to “try[] a smaller
20 number of cases representative of the group *as a whole*, and then [to] us[e] those verdicts as a
21 basis for settlement negotiations for the remaining cases.” *Collazo v. WEN by Chaz Dean, Inc.*,
22 2018 WL 3424957, at *1 n.2 (C.D. Cal. July 12, 2018) (emphasis added). Accordingly, “the
23 utility of a bellwether verdict depends on whether the tried claim is a truly representative test.”
24 Martin H. Redish & Julie M. Karaba, *One Size Doesn’t Fit All: Multidistrict Litigation, Due*
25 *Process, and the Dangers of Procedural Collectivism*, 95 B.U. L. Rev. 109, 127 (2015). As one
26 federal judge has noted, before selecting bellwether cases, “it is imperative to know what types of
27 cases” are in the coordinated proceeding and “the composition of the MDL” pool. Eldon E.
28 Fallon et al., *Bellwether Trials in Multidistrict Litigation*, 82 Tul. L. Rev. 2323, 2344 (2008).

1 Otherwise, the court risks selecting “an anomalous case . . . , thereby wasting substantial
2 amounts of both time and money.” *Id.*

3 Here, the pool of underlying cases is uncertain absent a filing cut-off date. That
4 information is critical for the bellwether selection process, which is in the beginning stages.
5 Thus, Uber submits that now is the appropriate time for the Court to set a filing cut-off deadline.

6 **Plaintiffs’ Position:** It remains too early to set a filing cut-off date. Uber’s latest argument
7 that the bellwether selection process requires a filing cut-off date is unpersuasive. MDL courts
8 routinely issue bellwether selection protocols while still allowing new cases to be directly filed
9 into the litigation. Indeed, Uber cites no examples of MDL courts insisting that all cases must be
10 filed before bellwether selection begins. Efficiencies would be lost if *all* potential cases had to be
11 filed before bellwethers could be selected. All that is needed is *enough* filed cases to understand
12 the range of claims. There is no dispute that condition is satisfied.

13 As long as this Court continues to resolve common legal and discovery issues, it does not
14 make sense to wind down the MDL. Fact discovery does not close for nine months. Dispositive
15 pretrial motions will not be heard for nearly a year. Both sides benefit from the efficiencies of the
16 MDL.

17 **VII. Coordination**

18 **Defendant’s Position:** Uber seeks the Court’s guidance on the ongoing efforts to ensure
19 coordination between the MDL and JCCP, particularly to ensure that witnesses are deposed once
20 across the cases, rather than sitting for multiple depositions unnecessarily. At the December 10,
21 2024 JCCP Informal Discovery Conference, Judge Schulman expressed intent to discuss
22 coordination with this Court. Uber continues to proceed in a fashion that permits fully
23 coordinated discovery, and MDL Plaintiffs indicated in the November 4, 2024, joint CMC
24 statement that they anticipate they “will be able to coordinate certain depositions going forward”
25 and would be amenable to coordination “if it does not prejudice either party.” (ECF No. 1823 at
26 24-25). Given overlapping document production and depositions, coordination will save
27 resources, promote judicial efficiency, and align with the principles of Federal Rule of Civil
28 Procedure 1. Defendants agree with Plaintiffs that the parties should remain focused on

1 complying with the Court's Orders. These Orders include PTOs 16 and 20, which outline the
2 productions required in advance of depositions. MDL Plaintiffs continue to try to add new
3 conditions beyond the Court's Orders, none of which have to date prevented JCCP Plaintiffs, who
4 receive the same discovery, from taking depositions. To facilitate coordination, Uber can submit a
5 proposed Coordination Order which has previously been shared with Plaintiffs, by December 20,
6 2024.

7 **Plaintiffs' Position:** Plaintiffs' position has not changed since Uber requested a
8 Coordination Order at the last case management conference. *See* ECF No. 1823 at 24-25.
9 Plaintiffs agree that coordination is useful, and have made every effort to coordinate with the
10 JCCP where possible. Indeed, Plaintiffs are planning to coordinate on several depositions
11 proceeding in January and February. But Plaintiffs cannot agree to coordinate when doing so
12 would be prejudicial. Plaintiffs continue to have significant concerns about Uber's over-
13 designation of documents as privileged, as well as Uber's lackluster and belated production of
14 documents long-promised. Those concerns are only more urgent under the schedule established
15 by PTO 21. All of these issues are being resolved under Judge Cisneros's careful supervision, and
16 a coordination order would improperly restrict her ability to craft solutions to meet the case
17 schedule. Moreover, Judge Cisneros issued PTO 20, which established production and deposition
18 timelines for the different tranches of custodians. The MDL Plaintiffs have notified Uber of their
19 intent to depose over 20 deponents consistent with the deposition timeframes set out in PTO 20,
20 including coordination of at least three (3) depositions with the JCCP.

21 Again, coordination is useful, but is not feasible when Uber continues to delay on its
22 discovery obligations, and must take a backseat to meeting the needs of this MDL. As Judge
23 Cisneros recently ordered in response to Uber's request for an extension of a discovery deadline:
24 "The Court is amenable to granting some degree of extension, but disapproves of Uber's
25 eleventh-hour motion. The last minute request leaves the Court little choice but to either grant
26 relief or consider issuing sanctions for noncompliance.... The Court would like the parties to stay
27 focused on quickly completing all discovery in compliance with the Court's orders." ECF No.
28 1946. No coordination order is necessary or appropriate to manage this MDL at this time.

VIII. Next Case Management Conference

The Parties look forward to discussing the Court's availability for the next case management conference.

Dated: December 16, 2024

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FILER'S ATTESTATION

I, Sarah R. London, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

Dated: December 16, 2024

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